*** THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY**

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AND

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*** THE HON'BLE SRI JUSTICE C.V. RAMULU**

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+ W.A. No.621 of 2004 & Batch

% Dated 08-02-2005

Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad.

… Appellant

Vs.

$ M/s. RLP Granite Private Limited,

Rep. by its Managing Director, Mr.A. Aja Babu,
& Others

… Respondents

! Counsel for the Appellants in W.As.621 to 625 of 2004 and for Respondent No.2 in W.As.696 to 698, 727 & 730 of 2004 :
Sri T. Anantha Babu, Senior Counsel

^ Counsel for Respondent No.1 in all W.As.: Mr. S. RAVI

^ Counsel for Respondents 2 to 4 in W.As. 621 to 625 of 2004 and for the appellants in W.As.696 to 698, 727 & 730 of 2004 :
The Advocate General.

< GIST:

> HEAD NOTE:

? Cases referred

(1997)4 SCC 559

2 2003(6) ALD 463 (DB)

3 (1995) 2 SCC 402

4 (1980) 2 SCC 437 : AIR 1980 SC 1037 : 1980(1) SCR 1170

C/15

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE C.V. RAMULU

W.A. Nos.621, 622, 623, 624, 625, 696, 697, 698, 727 & 730 of 2004

Writ Appeal No.621 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the order, dated 12-03-2004 in W.P. No.20085 of 2003 on the file of the High Court.)

Between:

Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad.

.. APPELLANT

AND

1. M/s. RLP Granite Private Limited,

a Private Limited Co., having its Registered Office

at 6-3-802, 1st Floor, Zainab Commercial Complex,

Ameerpet, Hyderabad-16,

Rep. by its Managing Director, Mr.A. Aja Babu,
S/o.Sri.M.Koti Reddy, aged about 58 years.

2. The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Industries & Commerce Department,
Secretariat Buildings, Hyderabad.

3. The Director of Mines and Geology,

Burugularamakrsihna Rao Bhavan, Tank Bund Road,

Hyderabad.

4. The Assistant Director of Mines & Geology,

Ongole, Prakasam District.

... RESPONDENTS

WRIT APPEAL No.622 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-03-2004 in W.P. No.20086 of 2003 on the file of the High Court.)

Between:

Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad.

..... APPELLANT

AND

1. M/s. Ongole Mineral Exports Private Limited,

a Private Limited Company, having its Registered

Office at 6-3-802, 1st Floor,

Zainab Commercial Complex, Ameerpet, Hyderabad-16,
Represented by its Managing Director,
Mr.K.Raghava Reddy, S/o.Sri K.Ramachandra Reddy,

aged about 48 years.

2. The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Industries and Commerce Department,
Secretariat Buildings, Hyderabad.

3. The Director of Mines & Geology,

Burugularamakrishna Rao Bhavan,

Tank Bund Road, Hyderabad.

4. The Assistant Director of Mines & Geology,

Ongole, Prakasam District.

... RESPONDENTS

WRIT APPEAL No.623 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-03-2004 in W.P. No.20087 of 2003 on the file of the High Court.)

Between:

Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad.

..... APPELLANT

AND

1 M/s. Margasree Granitres Private Limited,

a Private Limited Company,

having its Registered Office at 8-418,
Sunder Nagar, Mangamoor Donka, Ongole,

Represented by its Managing Director,

Mr.S. Venkateshwar Rao, S/o. Sri S.Venkat Rao,

aged about 45 years.

2. The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Industries & Commerce Department,
Secretariat Buildings, Hyderabad.

3. The Director of Mines & Geology,

Burugularamakrishna Rao Bhavan,

Tank Bund Road, Hyderabad.

4. The Assistant Director of Mines & Geology,

Ongole, Prakasam District.

.. Respondents

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WRIT APPEAL No.624 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-03-2004 in W.P. No.20084 of 2003 on the file of the High Court.)

Between:

Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad.

..... APPELLANT

AND

1. M/s. Arham Mineral Exports Private Limited,

a Private Limited Company having its Registered Office

at 3-6-157, Victory Vihar Apartments, Flat No.103,

Urdu Lane, Himayathnagar, Hyderabad,

Represented by its Managing Director,

Mr.Mohd.Ishack, S/o.Late Sri K.Vazir,

aged about 42 years.

2. The Government of Andhra Pradesh,

Represented by its Principal Secretary,

Industries & Commerce Department,
Secretariat Buildings, Hyderabad.

3. The Director of Mines & Geology,

Burugularamakrishna Rao Bhavan,

Tank Bund Road, Hyderabad.

4 The Assistant Director of Mines & Geology,

Ongole, Prakasam District.

... RESPONDENTS

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WRIT APPEAL No.625 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-03-2004 in W.P. No.20083 of 2003 on the file of the High Court.)

Between:

Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad.

..... APPELLANT

AND

1. M/s. Isra Mineral Exports Private Limited,

a Private Limited Company, having its Registered

Office at 3-6-157, Victory Vihar Apartments,

Flat No.103, Urdu Lane, Himayathnagar, Hyderabad,

Represented by its Managing Director,

Mr. Mohd. Ishack, S/o.Late Sri.K.Vazir,

aged about 42 years.

2. The Government of Andhra Pradesh,

Represented by its Principal Secretary,

Industries & Commerce Department,
Secretariat Buildings, Hyderabad.

3. The Director of Mines & Geology,

Burugularamakrishna Rao Bhavan,

Tank Bund Road, Hyderabad.

4. The Assistant Director of Mines & Geology,

Ongole, Prakasam District.

.....RESPONDENTS

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WRIT APPEAL No.696 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-03-2004 in W.P. No.20087 of 2003 on the file of the High Court.)

Between:

1. The Government of Andhra Pradesh

Rep. by its Principal Secretary,

Industries & Commerce (Mines) Department,
Secretariat Buildings, Hyderabad.

2. The Director of Mines & Geology,

Government of A.P., B.R.K.R. Bhavan,

Tankbund Road, Hyderabad.

3. The Assistant Director of Mines & Geology,

Ongole, Prakasam District.

..... APPELLANTS

AND

1 M/s. Margasree Granites Pvt. Ltd.,

a Private Limited Co., having its Regd. Office

at Sunder Nagar, Mangamnoor Donka, Ongole,

Prakasam District, Rep. by its Managing Director,

Mr. S. Venakteshwar Rao S/o. Sri S. Venkat Rao,

aged abut 45 years.

2 Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad.

..... RESPONDENTS

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WRIT APPEAL No.697 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-03-2004 in W.P. No.20086 of 2003 on the file of the High Court.)

Between:

1. The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Industries & Commerce Dept.
Secretariat Buildings, Hyderabad.

2. The Director of Mines & Geology,

Burugularamakrishna Rao Bhavan,
Tank Bund Road, Hyderabad.

3. The Assistant Director of Mines & Geology,

Ongole, Prakasam District.

..... APPELLANTS

AND

1. M/s. Ongole Mineral Exports Pvt. Ltd.,

a Private Limited Co., having its Regd. Office

having its registered office at 6-3-802, 1st floor,

Zainab Commercial Complex, Ameerpet, Hyderabad,

Rep. by its Managing Director Mr. K. Ragahava Reddy

S/o. Sri K. Ramchandra Reddy, aged about 48 years.

2. Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad.

.....RESPONDENTS

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WRIT APPEAL No.698 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-03-2004 in W.P. No.20085 of 2003 in on the file of the High Court.)

Between:

1. The Government of A.P.,

Rep. by its Principal Secretary,

Industries & Commerce (Mines) Dept.,
Secretariat Buildings, Hyderabad

2. The Director of Mines & Geology,

Government of A.P., BRKR Buildings, Hyderabad.

3. The Asst. Director of Mines & Geology,

Ongole, Prakasam District.

..... APPELLANTS

AND

1. M/s. RLP Granites Pvt. Ltd.,

a Private Limited co., having its Regd. Office

at Ameerpet, Hyderabad,

Rep. by its Managing Director Mr. M. Aja Babu

S/o. Sri M. Koti Reddy, aged about 58 years.

2. Andhra Pradesh Mineral Development Corpn.,

Pancom Business Centre, Ameerpet, Hyderabad

.....RESPONDENTS

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WRIT APPEAL No.727 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-03-2004 in W.P. No.20083 of 2003 on the file of the High Court.)

Between:

1. The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Industries & Commerce Department,

Secretariat Buildings, Hyderabad.

2. The Director of Mines & Geology,

Burugularamakrishna Rao Bhavan,
Tank Bund Road, Hyderaba d.

3. The Assistant Director of Mines & Geology,

Ongole, Prakasam District.

..... APPELLANTS

AND

1. M/s. Isra Mineral Exports Private Limited,

a Private Limited Company having its
Registered Office at 3-6-157, Victory Vihar

Apartments, Flat No. 103, Urdu Lane,

Himayathnagar, Hyderabad,

Rep. by its Managing Director, Mr. Mohd. Ishack

S/o late Sri K.Vazir, aged about 42 years.

2. Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad.

.....RESPONDENTS

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WRIT APPEAL No.730 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-03-2004 in W.P. No.20084 of 2003 on the file of the High Court.)

Between:

1. The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Industries & Commerce Department,

Secretariat Buildings, Hyderabad.

2. The Director of Mines & Geology,

Burugularamakrishna Rao Bhavan,
Tank Bund Road, Hyderabad.

3. The Assistant Director of Mines & Geology,

Ongole, Prakasam District.

..... APPELLANTS

AND

1. M/s. Arham Mineral Exports Private Limited,

a Private Limited Company having its Registered Office

at 3-6-157, Victory Vihar Apartments, Flat No.103,

Urdu Lane, Himayathnagar, Hyderabad,

Represented by its Managing Director,

Mr.Mohd.Ishack, S/o.Late Sri K.Vazir,

aged about 42 years.

2. Andhra Pradesh Mineral Development Corporation,

Pancom Business Centre, Ameerpet, Hyderabad

.....RESPONDENTS

Counsel for the Appellants in W.As.621 to 625 of 2004 and for Respondent No.2 in W.As.696 to 698, 727 & 730 of 2004 :
Sri T. Anantha Babu, Senior Counsel

Counsel for Respondent No.1 in all W.As.: Mr. S. RAVI

Counsel for Respondents 2 to 4 in W.As.621 to 625 of 2004 and for the appellants in W.As.696 to 698, 727 & 730 of 2004 : The Advocate General.

The Court made the following :

THE HONOURABLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HONOURABLE SRI JUSTICE C.V. RAMULU

–

W.A. Nos.621, 622, 623, 624, 625, 696, 697, 698, 727 & 730 of 2004

COMMON JUDGMENT: (Per Hon'ble Sri Justice B. Sudershan Reddy)

This batch of Writ Appeals are required to be disposed of by a common judgment since they arise out of the common order made in W.P. Nos.20083, 20084, 20085, 20086 & 20087 of 2003, dated 12-03-2004, by a learned single Judge of this Court. Learned single Judge allowed the writ petitions filed by the respondents/writ petitioners and accordingly set aside the impugned orders passed by the Director of Mines and Geology in Proceedings Nos.15721/R3(2)/2003, 15718/R3(2)/2003, 15720/R3(2)/2003, 15722/R3(2)/2003, 15719/R3(2)/2003, dated 16-06-2003, as confirmed by the

State Government in Memo Nos.11312/M.II(1)/2003-5, 11311/M.II(1)/2003-5, 11309/M.II(1)/2003-5, 11310/M.II(1)/2003-5, 11308/M.II(1)/
2003-5, dated 15-09-2003, respectively.

The only question that falls for our consideration is whether the proceedings of the Director of Mines and Geology, Hyderabad, dated 16-06-2003, cancelling the quarry lease granted in favour of the writ petitioners and its confirmation by the State Government suffer from any legal infirmities?

For the sake of convenience, we shall refer the parties as arrayed in the writ petitions.

FACTUAL MATRIX:

In order to consider the question as to whether the impugned order cancelling the quarry lease suffers from any illegality, it is just and necessary to notice the facts leading to filing of this batch of writ petitions.

The Government of Andhra Pradesh, having found reserves of Black Granite Mineral in the land admeasuring Acs.268-70 cents of Ramatheertham village, Chimakurthy Mandal, Prakasam District, accorded permission for shifting of the existing Cattle Breeding Farm therein to Chadalavada village, Naguluppalapadu Mandal, Prakasam District, into the lands owned by the

Endowments Department subject to certain terms and conditions stipulated in G.O. Ms. No.23, dated 22-02-1999, so as to enable the Andhra Pradesh Mineral Development Corporation Limited (for short “the Corporation”), a fully owned undertaking of the State Government to undertake quarry operations of Black Granite Mineral available therein. The Corporation is engaged in the activity of prudent exploitation of minerals in the State of Andhra Pradesh. The State Government further vide its G.O. Ms. No.550, Revenue (Assn.II) Department, dated 12-09-2002, accorded permission to the Collector, Prakasam District, to transfer the land admeasuring Acs.268-70 cents belonging to Animal Husbandry Department in favour of the Corporation, in lieu of the Endowment land through negotiations treating the transfer of land as a special case.

The Corporation has applied for grant of quarry lease but subsequently given its consent for converting the same into an application for grant of prospecting licence for black granite mineral. The State Government vide G.O. Ms. No.11, dated 05-01-2000, granted prospecting licence for a period of two years in favour of the Corporation in accordance with the provisions of the Mines & Minerals (Development & Regulation) Act, 1957 (for short “the Act”) and the Rules thereunder over an extent of Acs.70-70 cents in various survey numbers.

The State Government vide its proceedings, dated 05-08-2000, granted prospecting licence for black granite for a period of two years in favour of the Corporation under the provisions of the Act and the Rules thereunder over an extent of Acs.89-06 cents in Survey Nos.52, 55/3, 3C and 55/4A of R.L. Puram Village, Chimakurthy Mandal, Prakasam District.

Be it noted, the Corporation since purchased the land for a valuable consideration became the owner of the land and thus acquired surface rights even before the grant of prospecting licence. That the Corporation is the true and absolute owner of the land in question is not in dispute, and therefore, no further details in this regard are required to be noted.

The Corporation, keeping in view, the policy of the State Government for development of mineral industry with private participation, issued tender notifications on 09-08-2000 and 04-01-2001 inviting tenders from the persons having minimum qualifying criteria for prospecting and quarrying galaxy granite in certain parts of the land. As per the tender conditions, the auctioned amount or the amount quoted in the sealed tender for Mining Franchise Fee (MFF) per cubic meter whichever is higher to be considered as the highest bid. The Corporation finalised the tenders in favour of M/s. Alif Granite Private Limited who formed two joint venture companies i.e.

M/s. Arham Mineral Exports Private Limited for Block No.X and M/s. Isra Mineral Exports Private Limited (Petitioners in

W.P. Nos.20084 & 20084 of 2003 respectively) for Block – III for prospecting and quarrying black galaxy granite. The joint venture companies entered into two separate Mining Franchise Fee agreements (for short 'MFF agreement') with the Corporation. Likewise, the Corporation finalised the tender in favour of one M/s. Krishna Sai Granites and M/s. Harikrishna Sai Granites who formed joint venture company in the name of M/s. Margasree Granite Private Limited (Petitioner in

W.P. No.20087 of 2003) and also entered into a separate

MFF agreement with the Corporation. The Corporation also finalsied the tenders in favour of M/s. Midwest Granite Private Limited who formed two joint venture companies i.e. M/s. RLP Granite Private Limited for Block – VII, and M/s.

Ongole Mineral Exports Private Limited (Petitioners in

W.P. No.20085 & 20086 of 2003 respectively) for Block – VIII for prospecting and quarrying galaxy granite. Thereafter, the Corporation applied for transfer of their prospecting licences in favour of the joint venture companies and the Director of Mines and Geology accordingly transferred the prospecting licence held by the Corporation in favour of the joint venture companies for the unexpired portion of the licence fee. That within short span of time, after transfer of the prospecting licence by the Corporation in favour of the joint venture companies, some disputes were raised by the promoters of the joint venture companies challenging a part of Project Cooperation and Investment Agreement (for short 'PCI agreement) and MFF agreement with regard to payment of fee. The writ petitions filed by M/s. RLP Granite Private Limited and M/s. Ongole Mineral Exports Private Limited were dismissed by a Division Bench of this Court vide judgment, dated 09-09-2002, upholding the legality and the validity of collection of mineral franchise fee. That according to the Corporation, M/s. RLP Granite Private Limited and

M/s. Ongole Mineral Exports Private Limited (Writ Petitioners) have totally stopped quarry operations since 09-09-2002. M/s. Isra Mineral Exports Private Limited stopped operations from 01-02-2002 whereas M/s. Arham Mineral Exports Private Limited stopped operations from 19-03-2003 and M/s. Margasree Granite Private Limited stopped operations from

01-01-2002. The judgment rendered by the Division Bench of this Court is the subject matter of S.L.Ps. pending in the Supreme Court where the operation of the judgment has not been stayed. The Supreme Court declined to grant any stay vide its order, dated 02-12-2002.

That according to the Corporation, certain amounts were payable by the

petitioners to the Corporation in the following manner:-

1. M/s. Arham Mineral Exports Pvt. Ltd. -Rs. 73.50 lakhs

2. M/s. Isra Mineral Exports Pvt. Ltd. -Rs. 35.35 lakhs

3. M/s. Margasree Granite Pvt. Ltd. -Rs.101.50 lakhs

4. M/s. RLP Granite Private Limited -Rs. 89.80 lakhs

5. M/s. Ongole Mineral Exports Pvt. Ltd. -Rs. 89.80 lakhs

The Corporation issued separate show cause notices through its letters, dated 25-02-2003, calling upon the petitioners to pay the outstanding amounts due and payable by them within 15 days from the date of receipt of the letters. The Corporation in clear and categorical terms put the petitioners on notice that it would be constrained to invoke Clause 8.1 of MFF agreement and Clause 11.1(e) and 14.1(e) of PCI agreement and terminate the said agreements duly forfeiting the security deposit paid by the investor company under the agreements and restrain them from entering into the mining area.

The petitioners filed application on 04-03-2003 before the Supreme Court seeking stay of operation of the show cause notices, which was not granted. Accordingly, the Corporation vide its letter, dated 17-03-2003, terminated the PCI and MFF agreements and restrained the petitioners from entering into the leased area and requested them to stop quarrying operations forthwith. Further, the Corporation reserved its right to avail such appropriate legal remedies, as may be available to it later, for recovery of the outstanding amounts together

with interest including disposal of granite blocks, if any, and adjust sale proceeds against the amounts due and payable by the petitioners. The petitioners were required to retransfer the quarry lease granted by the Director of Mines and Geology, which according to the Corporation was granted purely as a consequential measure to MFF and PCI agreements.

In the meanwhile, the Corporation on 26-03-2003 took possession of the leased areas and the blocks lying at the site under a panchanama conducted by the Mandal Revenue Officer, Chimakurthy.

Thereafter, the Corporation, vide its letter, dated 16-05-2003, duly informed the Director of Mines and Geology that in view of the withdrawal of surface rights and termination of PCI and MFF agreements, the quarry leases granted to the petitioners have become inoperative and invalid and that they cannot enter upon the Corporation's lands and carryon quarry operations in any manner.

The Director of Mines and Geology pursuant to the information furnished by the Corporation, dated 16-05-2003, issued show cause notices, dated 26-05-2003, requiring the petitioners to show cause within ten days from the date of receipt of the notice as to why the quarry lease of black granite granted to them should not be cancelled, since the Corporation has withdrawn their consent of surface rights in the interest of mineral development of the State. The petitioners submitted their individual explanations about which there is no

dispute. The Director being the competent authority, after an elaborate consideration of the explanations submitted by each of the petitioners, cancelled quarry leases initially granted in favour of the petitioners. The leases have been cancelled mainly on the ground that under the statutory provision "the consent of owner of the land is a condition precedent for grant of lease. This condition should be compulsorily complied with under Rule 12(3A) of A.P. Minor Mineral Concession Rules, 1966 (for short 'the Rules') read with note under Rule 12(5) of the Rules, the consent of the pattadar is necessary." The competent authority found that the petitioners are no longer entitled to continuance of quarry lease because the substratum of the grant has ceased to exist. The authority relied upon the judgment of the Supreme Court reported in **Pallava Granites Industrial India (P) Ltd. v Government of A.P..**

The petitioners, being aggrieved by the orders of cancellation of the lease granted to them, filed revision before the Government and the Government vide separate proceedings, dated 15-09-2003, dismissed the revision applications. It is that order, which is challenged in this batch of writ petitions by the petitioners.

In the meanwhile, the Corporation filed its applications on 17-06-2003 for grant of quarry leases for black granite over an extent of Acs.89-09 cents and Acs.31-09 cents with the Assistant Director of Mines & Geology, Ongole, and the same was granted by the Director vide his proceedings, dated 19-06-2003, since no other applicant possessed surface rights for the lands in respect of which applications have been submitted seeking grant of quarry lease. The Corporation on 20-06-2003 executed lease deeds after payment of Rs.43.00 lakhs to the State Government towards advance dead rent and security deposit etc. Thereafter, the Assistant Director of Mines & Geology,

Ongole, issued work order on
20-06-2003 to the Corporation permitting it to commence the quarry operations with effect from 20-06-2003.

The learned single Judge by a common judgment, dated 12-03-2004, allowed all the writ petitions and accordingly set aside the order of cancellation of quarry lease. Learned single Judge took the view that under the provisions of the Rules framed under the Act, the Director of Mines and Geology is empowered under Rule 12 of the said Rules to determine/cancel leases only in cases where lessee violates conditions of grant or covenants of the lease deed and on no other ground. The learned single Judge found that the petitioners did not violate any of the conditions of grant or covenants of the lease deeds, and therefore, no proceedings as against them could have been issued for cancellation of the lease deeds. That as per the terms of the quarry lease and conditions of grant, payment of franchise fee is not a condition; therefore, the information furnished by the Corporation regarding termination of the agreements entered by them with the petitioners cannot be a valid ground for cancellation of quarry lease. The learned Judge further held that once a quarry lease is granted, even with regard to patta lands, “on the consent given by the pattadar/owner, it would not depend on continuance of such consent of pattadar/owner”. The learned single Judge, accordingly, held that there is no such requirement of continuous consent under the Rules. In such view of the matter, withdrawal of consent by the Corporation, consequent upon termination of PCI & MFF agreements is not a valid ground for cancellation of leases; the consent of the owners of the land is required for disposing of the applications for grant of quarry lease in case of minor minerals but once it is granted, the continuance of lease will not depend upon the sweet will of the landowner.

SUBMISSIONS:

The learned Advocate General, appearing on behalf of the State, and Sri T. Anantha Babu, learned Senior Counsel appearing for the Corporation, submitted that the petitioners are not entitled to grant of any relief, since they have been lawfully evicted from the land by the Corporation, which is admittedly the owner of the surface rights of the land, in accordance with PCI and MFF agreements entered into between the Corporation and the petitioners. The petitioners have lost the possession of the land, which is significant. The learned Senior Counsel submitted that PCI and MFF agreements entered into between the Corporation and the petitioners based on which the prospecting licences have been transferred and the grant of quarry leases in favour of the petitioners based on the very same agreements are so integrally intertwined and cannot be separated into watertight compartments. Cancellation of PCI and MFF agreements automatically results in withdrawal of the consent, which is one of the requirements not only for grant but also for subsistence and continuance of a quarry lease under the provisions of the Rules. In the instant case, since possession has been taken over by the Corporation, the lessee can no longer carryon mining operations. The termination of PCI and MFF agreements eventually resulted in eviction of the lessees from the land itself, which is one of the crucial factors to be borne in mind to consider as to whether the petitioners are entitled to grant of any relief. The contract entered into by and between the parties has been rendered unworkable by the intervention of the supervening circumstances, which resulted in deprivation of possession of the land by the lessee on account of which quarrying has become impossible. The learned Senior Counsel submitted that on account of cancellation of PCI and MFF agreements and resumption of possession by the Corporation, the

very foundation of the grant disappeared. It was further submitted that the learned single Judge committed an error in practically directing the Corporation to redeliver possession of the land without there being any issue as to the validity of resumption of land by the Corporation after cancellation of the PCI and MFF agreements. The relief granted by the learned Judge is beyond the scope of the writ petition.

Sri S. Ravi, learned counsel for the petitioners, reiterated the contentions urged before the learned single Judge. It was submitted that the impugned order of cancellation is *ultra vires* the Rules. The lease could be cancelled only in case of any breach, on the part of the lessee, of any covenant or conditions contained in the grant and on no other ground. The Director, no doubt, is the competent authority to grant and cancel the quarry lease, but he cannot arbitrate on disputes between the parties. Even in the show cause notice, there is no allegation of breach of any condition of the grant or any statutory provision and in the absence of the same, the impugned order is totally unsustainable in law. The learned Counsel submitted that it is the authority, which grants possession of the quarry, and not the owner of the surface rights, and therefore, resumption of possession of the land by the Corporation is immaterial. Relying on Section 24-A of the Act, learned Counsel contended that on the issue of mining lease under the Act and the Rules made thereunder, the lessee, at all times, during the currency of the lease, is entitled to carryon mining operations. The contention was that even if the consent is withdrawn, the lessee is entitled to carryon quarry operations, which means, the lease cannot be cancelled on the ground of withdrawal of consent. Continuous consent of the owner of surface rights of the land is not one of the requirements and no quarry lease can be cancelled on the ground of withdrawal of consent by the owner of surface rights.

SUMMARY OF SEQUENCE OF EVENTS:

In order to appreciate the contentions urged and the submissions made, the sequence of events may be noted:

The Government have granted prospecting licence for black granite for a period of two years in favour of the Corporation, which is fully owned by the State Government vide G.O. Ms. No.23, dated 22-02-1999. The prospecting licence was executed on 10-08-2000 and was valid up to 09-08-2002. That as per the decision of the State Investment Promotion Board, with a view to provide private participation in the development of minerals, the Corporation permitted joint venture companies for prospecting and quarrying galaxy granite in which the Corporation continues to hold 26% equity. The Corporation has entered into PCI and MFF agreements with the conditions mentioned therein with the joint venture companies. It is pursuant to those agreements, the Corporation has applied for transfer of their prospecting licence in favour of the petitioners' joint venture companies. The prospecting licences were, accordingly, transferred under the orders of the competent authority in favour of the petitioners' joint venture companies.

The joint venture companies have filed applications for grant of quarry lease over the subject lands in the prescribed proforma in which as against Column – X, it is indicated that the surface rights have been transferred in their favour by the Corporation through the PCI agreement. Basing on the same, the Director of Mines and Geology has granted quarry leases in the subject area to

each of the joint venture companies for a period of 20 years. The lease deeds were, accordingly, executed and valid up to 2022.

That each one of the petitioners' joint venture companies is due to pay certain amounts to the Corporation. The Corporation vide its letter, dated 17-03-2003, terminated the PCI and MFF agreements and accordingly restrained the petitioners' joint venture companies from entering into the leased area. The possession of the leased areas was taken over on 26-03-2003. The show cause notices issued before termination of the agreements is the subject matter of debate in the Supreme Court. The action of the Corporation in terminating the agreements is not challenged. Its act of taking possession is also not challenged in any of the proceedings. The decision of the Director of Mines and Geology, dated
19-06-2003, granting two quarry leases to the Corporation in respect of the very same area where leases were earlier granted to each of the petitioners is also not challenged.

Now we shall deal with the question relating to the requirement of grant of consent and the effect of withdrawal thereof:

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The Governor of Andhra Pradesh in exercise of the powers conferred by sub-section (1) of Section 15 of the Act made the Rules regulating the grant of mining leases in respect of the minor minerals in the State of Andhra Pradesh and for the purposes connected therewith, namely "The A.P. Minor Mineral Concession Rules, 1966".

Rule 12 (5)(a)(i) of the Rules provides that a prospecting licence or a

quarry lease for granite useful for cutting and polishing shall be granted by the Director on an application made to the Assistant Director of Mines and Geology concerned in Form N/P and each such application for grant of P.L. or Q.L. shall be accompanied by a sketch drawn to the Scale demarcating the boundaries for easy identification on the ground duly signed by the applicant…….the application for grant of prospecting licence or quarry lease for granite shall be disposed of by the Director in that order of their receipt. The Director shall grant lease to the deserving applicant on merits to be recorded in writing……. provided Director may grant quarry lease to an applicant whose application is received later, in preference to earlier application with the prior approval of the Government for any special reasons to be recorded in writing.

Proviso to Rule 12(5)(b) of the Rules further provides that where a prospecting licence has been granted in respect of any land, the licence shall have a preferential right for obtaining a quarry lease in respect of the land over any other person in case he has undertaken prospecting operations to establish mineral resources and submitted a Prospecting report in such land and such right can be exercised only once over the entire prospected area.

That a plain reading of the proviso makes it clear that a prospecting licence holder has a preferential right for obtaining a quarry lease provided the prospecting licensee has undertaken prospecting operations to establish mineral resources and submitted a prospecting report. It is not that every prospecting licensee has a preferential right for automatically obtaining a quarry lease. The preference is subject to the conditions provided for in the proviso itself. The contention that the petitioners' joint venture companies were granted quarry lease on preferential basis is not well founded. It is nobody's case that

the petitioners' joint venture companies have undertaken prospecting operations and submitted any prospecting report. That at any rate, the preferential right for obtaining quarry lease by a prospecting licensee has nothing to do with the mandatory requirement of consent to be obtained by every applicant from the owner of the surface rights.

Form - P provides for format of a plan for quarry lease for granite. Form - Q provides for format of an application for renewal of quarry lease for granite.

Column 3(x) of Form – P clearly indicates that in case, if the applicant has no surface rights over the area for which he is making an application for grant of quarry lease is required to obtain consent of the owner and occupier of the land for undertaking quarry operations. The consent of the owner and occupier of the land is required to be obtained in writing and be filed. The object behind the Rule is obvious that in the absence of consent of the owner of the surface rights, no quarry lease could be granted enabling an applicant to operate quarry adversely affecting the right, title and interest in the surface rights of such owners of the land. It may be noted, even the State cannot interfere, in any manner, whatsoever, with the surface rights owned and possessed by the owners of the land, since the subsoil rights alone vest in the State and not the surface rights.

Column - 2(ix) of Form – Q clearly indicates that consent is required even for grant of renewals. It reads:

> "Does the applicant continue to have surface rights over the Area of the land for which he required renewal of the Quarry Lease; if not, has he obtained the consent of the

owner, and the occupier for undertaking quarry operations. If so, the consent of the owner and the occupier of the land obtained in writing be filed."

Such is the importance of the requirement of consent of the owner in writing without which no quarry lease or renewal of quarry lease for granite could be granted in law.

That without the consent of the owner of the surface rights, the grantee does not have any right of access, and he would be disabled from carrying on mining operations. Neither the Government nor the competent authority can dispense with the requirement, since the surface rights vest in the owner of the land and only sub-soil rights vest in the State. The requirement to have the consent of the owner of the surface rights and the occupier of the land for undertaking quarry operations is an essential requirement. The requirement to be obtained is not only from that of the owner but also from the occupier of the land. That in case, if the owner and occupier of the land are different, the consent from both is required to be obtained. The purpose of obtaining such consent is obviously clear since the quarry operations adversely effect the right, title and enjoyment of the owner and/or the occupier of the surface rights of the land. Neither the Act nor the Rules visualize taking over or adversely effecting the right to use and occupy the land by the owners and/or the occupiers of surface rights of the land, in any manner whatsoever. The right to use and enjoy the surface rights as well as prudent exploitation and the development of minerals is thus balanced by the provisions of the Rules.

The Mineral Concession Rules 1960, also provide the requirement of

obtaining consent of the land owner and the same to be made available along with the application seeking grant of mining lease but the third proviso to Rule 22(3)(i)(h) of the Mineral Concession Rules 1960, specifically carves out an exception that in case of renewal no further consent would be required where consent has already been obtained. That once consent has already been obtained at the time of grant of lease, no further consent is required to be obtained in case of renewal. In contra distinction, the Minor Mineral Concession Rules 1966, require the consent to be obtained even for renewals. The decision in **S.R.V.V.S.V.R.G. Yachendra v. Union of India** in no manner helps us and renders any assistance in considering the question raised as to whether the consent of the landowner and occupier is a continuous requirement in case of a quarry lease under the provisions of the Minor Mineral Concession Rules, 1966. The decision is an authority for the proposition that no further consent would be required in case of renewal under the Mineral Concession Rules 1960, where consent has already been obtained at the time of grant of lease.

In **Pallava Granites Industrial India (P) Ltd.** (1 Supra) the Supreme Court while repelling the contention that there was no need to obtain consent of the owner of the land before grant of mining lease under the provisions of the said Rules observed:

> "The right to excavate the mines from the land of private owner is based on the agreement; unless the lessor gives his consent, no lessee has a right to enter upon his land and carryon mining operations. The right to grant mining lease to excavate the mines beneath the surface is subject to the agreement of the landowners. Therefore, with a view to ensure that there will not be any obstruction in the working of the mining lease and also for the peaceful operation of the excavation of the mines, insistence on the consent of the landlord is necessary."

The right to grant quarry lease to excavate the minerals beneath the surface of the land is subject to agreement of the owners of the land. In the absence of consent, no quarry lease could be granted in favour of any individual.

I n **State of Tamilnadu v. M.P.P. Kavery Chetty** the Supreme Court while considering the Constitutional validity of Rule 19-A of the Tamilandu Mineral Concession Rules 1959, as amended, which did not provide for consent of the owner of the land as a condition for grant of quarry lease, observed:

> "Learned counsel for the respondents submitted that under the first proviso of Rule 19-A the consent of the owner of the land was not made a condition and it was bad in law on that account. The submission does not take note of Section 24-A of the said Act. Thereunder the holder of a mining lease under the said Act or rules made under it is empowered to enter the land on which the lease has been granted and carry out mining operations. He is obliged to compensate the landowner for any loss or damage that his operations may cause. Consent of the occupier is required only when the holder of the lease desires entry into any building or enclosed court or garden."

It is a case where the Rule itself did not provide the requirement of consent of the owner of surface rights or occupier of the land. In the case on hand, the Rules mandate the consent of the owner and the occupier of the land as a condition precedent for grant of a quarry lease.

Section 24-A(1) of the Act upon which reliance was placed by the learned counsel for the petitioners provides that "on the issue of a reconnaissance permit, prospecting licence or mining lease under the Act and the Rules made thereunder, it shall be lawful for the holder of such permit, licence or lease, his agents or servants or workmen to enter the lands over which such permit, lease or licence had been granted at all times during its currency and carryout

all such operations as may be prescribed." Its meaning is clear and simple that once the prospecting licence or mining lease is issued under the Act and the Rules made thereunder, the holder of the licence or the lease is entitled to enter into the lands over which such permit, lease or licence has been granted, at all times, during its currency and carryout all such operations as may be prescribed. It means that after the grant of licence or the lease, as the case may be, no further consent of the owner of the land or the occupier is required to be obtained for entering into the land so as to undertake quarry operations, since the grant of licence or lease, as the case may be, is based on prior consent given by the owners of the land. The consent of the owner of the land enabling the grantee to enter into the land and carry on the quarry operations is implicit in the grant of lease or licence itself. The provision deals with rights of the holder of permit, licence or lease, to enter the lands over which such permit, lease or licence has been granted and enables such holder to carry on quarry operations. It deals with post grant situation.

Section 24-A(1), in our considered opinion, in no manner deals with the pre-condition of a requirement of a consent from the land owner for grant of quarry lease for granite, particularly in cases, where such requirement is made mandatory by the Rules framed in exercise of the Rule making power under the provisions of the Act.

Sub-section (2) of Section 24-A of the Act mandates the holder of a prospecting licence or mining lease is liable to pay compensation to the occupier of the surface of the land granted under such permit, licence or lease for any loss or damage which is likely to arise or has arisen from or in consequence of the reconnaissance, mining or prospecting operations. It confers right upon the owner and occupier of the surface of the land to claim

compensation for any loss or damage, which may have arisen from or in consequence of the mining or prospecting operations. That any loss on account of such mining or prospecting operations undertaken even under a valid permit, licence or mining lease is required to be compensated by the holder of the licence or the mining lease.

Section 24-A deals with the rights and corresponding obligation of holder of permit, licence or lease to enter into the land during the currency of the grant and carryout all such operations without any further consent of the landowner or occupier and imposes an obligation to compensate the occupier of the surface of the land for any loss or damage which may have arisen from or any consequences of mining or prospecting operations. This Section in no manner deals with or dispenses with the requirement of consent of the landowner or occupier for grant of lease and its continuance.

That a fair reading of Rule 12-A and Forms – P & Q, which also form part of the package of Rules suggest that the requirement of consent of the owner and or occupier of the land is a condition precedent for grant of quarry lease and, at all times, during its currency, without which no person can carryout the quarrying operations.

The word expression “does the applicant <u>continue to have surface rights</u> over the Area of the land for which he required renewal of the Quarry Lease” in Column 2 (ix)A.(a) of Form – Q is a clear indication that the continuance of consent entitling to use surface rights throughout the currency of lease is an essential requirement.

The petitioners in their application in Form – P clearly stated that the surface rights have been transferred through the PCI agreement with the Corporation.

The question is what is the effect of cancellation of the said agreement. Cancellation of PCI agreement simply means, withdrawal of the consent by the owner and occupier of the land for undertaking quarry operations. It is a different matter altogether that the petitioners as well could have challenged the order of termination of the agreements if they were really aggrieved by the same. The fact remains that there is no order interdicting the order of cancellation of agreement. The whole basis on which quarry lease has been granted in favour of the petitioners has been taken away and that resulted in cancellation of the quarry lease granted in favour of the petitioners.

Whether the impugned order is *ultra vires* the Rules ?

The petitioners contend that Rule 12(5)(h)(xii) of the Rules provides for determining the licence only in case of any breach on the part of licensee or lessee or any covenant or conditions contained in the grant and for no other reason. In the show cause notices issued to the petitioners, it is clearly alleged that by virtue of withdrawal of surface rights due to violation of PCI and MFF agreements, the lessee company cannot operate without surface rights, consequently the interest of the State is put into jeopardy in exploiting the mineral wealth. It is also stated, the termination of the said agreements results in withdrawal of consent and the quarry lease granted has become inoperative, invalid and the petitioners cannot enter upon the Corporation's land and carryon the quarrying operations. In reply, the petitioners stated that the surface right

holders cannot withdraw their consent or interfere with the quarry operations. Their right is only to receive compensation and as per Section 24-A of the Act the grantees are entitled to enter into the leased areas. It was also submitted that the authority cannot interfere in the dispute between the Corporation and the petitioners.

In our considered opinion, Rule 12(5)(h)(xii) of the Rules is an enabling provision, which enables the Director to determine the licence or lease and take possession of the premises in case of any violation on the part of the licensee or lessee or any covenant or conditions contained in the agreement. The said Rule which enables the Director to determine the lease is not exhaustive of all the contingencies which might lead to cancellation of lease as is evident from Clauses 8(16) and 9-A of the lease deed.

Clause 9-A of the lease deed says that the Government reserves the right; (i) to cancel the quarry lease granted and executed under these rules after giving a previous notice;
(ii) to prohibit quarrying operations in part or the whole of the area under lease with recorded reasons.

Once it is to be accepted that Rule 12(5)(h)(xii) of the Rules is not exhaustive of all the contingencies, which might lead to cancellation of the lease, the Director being the authority to grant the quarry leases is entitled and not precluded to cancel or withdraw the grant on any other valid grounds. The power to grant encompasses in itself the power to cancel. Whether the grounds on which an order of cancellation is made are valid and tenable can always be examined by this Court in exercise of its judicial review jurisdiction under Article 226 of the Constitution of India.

There is no dispute that the consent of the owner and or occupier of the land is a condition precedent for grant of quarrying lease under the Rules. In MFF agreement the petitioners have specifically agreed to pay franchise fee in consideration of the consent for surface rights given by the Corporation. The petitioners have further agreed that on failure to pay mining franchise fee in the manner stipulated in the agreement shall constitute a breach of the terms of the agreement, in which event, the Corporation shall be entitled to terminate the agreement and restrain the joint venture companies from entering into the area held under the lease by withdrawing the consent over surface rights. In case of termination, the petitioners have agreed to retransfer the lease to the Corporation. It is under those circumstances, the Director came to the conclusion that the petitioners are no longer entitled for continuance of the quarry lease because the substratum of the grant has ceased to exist. The petitioners have agreed to pay the mining franchise fee in consideration of consent for grant of surface rights by the Corporation. On consideration of the facts, the Director came to the right conclusion and accordingly held that the contract has perished and has become unworkable. It is a clear case of violation of condition of grant, since the grant itself is based on consent given by the Corporation in the shape of PCI and MFF agreements.

The petitioners having stated in clear and categorical terms in their application in Form – P that surface rights have been transferred by the Corporation through PCI agreement, cannot be permitted to turn around and contend that even after termination of the PCI agreement, the consent given by the Corporation remains intact and endures to their benefit. The consent, itself, has been given for consideration of payment of franchise fee. It does not lie in the mouth of the petitioners to turnaround and contend that whether they pay the franchisee fee or not as agreed, the consent cannot be withdrawn and

withdrawal of the consent is of no consequence. Such ingenious contentions, cannot be countenanced by this Court in a proceeding under Article 226 of the Constitution of India. No relief could be granted on the strength of such pleas. Be it noted that the grant of relief under Article 226 of the Constitution of India is not a matter of course but within the discretionary jurisdiction of the Court. The Court would be well within its limits not to exercise its discretion, if equity and public interest so requires, even in cases where the impugned action of the authorities may suffer from some legal infirmities.

While exercising our powers, we must keep in mind the well-settled principles of justice and fair-play and should exercise the discretion only the ends of justice require it and not for the purposes of upholding the technicalities. We find ourselves unable to intervene in the matter of this nature by issuing a Writ o f *Mandamus* declaring the impugned proceedings void for any such interference could not be in public interest. It has been observed by the Supreme Court in **Shiv Shankar Dal Mills v. State of Haryana** :

> "Article 226 grants an extraordinary remedy which is essentially discretionary although founded on legal inquiry. It is perfectly open for the Court, exercising this flexible power, to pass such order as public interest dictates and equity projects:
>
> > 'Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, *the granting or withholding of relief may properly be dependant upon considerations as of public interest*'."

Be it noted, that the petitioners have not challenged the cancellation of MFF agreement as well as the subsequent grant of quarry lease to the Corporation. The petitioners have admittedly stopped quarry operations even much prior to takingover possession of the land. These factors cannot be ignored in considering as to whether the case on hand is a fit case for exercising our discretion under Article 226 of the Constitution of India, for the purposes of granting any relief even if it is to be held that the impugned order passed by the Director is not strictly within the four-corners of Rule 12 (5) (h) (xii) of the Rules. The Corporation resumed the possession immediately after termination of the PCI and MFF agreements and continues to be in possession of the same. The said act of resuming possession of the land is unrelated to the cancellation of quarry lease by the Director and as confirmed in the revisional order passed by the Government. We cannot direct redelivery of possession of the land without setting aside the proceedings of termination of the agreements, which are not impugned. It is settled law that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, does not issue futile writs.

For all the aforesaid reasons, we find no merit in this batch of writ petitions.

However, it may be made clear that the observations made and the conclusions drawn in this judgment shall not preclude the petitioners from availing such remedies as may be available to them in law to challenge the cancellation of PCI and MFF agreements by the Corporation, in which event, the matter shall have to be adjudicated on its own merits uninfluenced by the observations made in this judgment. Remedies of the petitioners, in this regard,

are left open.

Accordingly, the common order under appeals is set aside and the Writ Petitions are dismissed. The Writ Appeals are allowed. Each party shall bear their own costs.

_____

B. SUDERSHAN REDDY, J

Date: _____ February, 2005.

_____

C.V. RAMULU, J

Note:

L.R. copies to be marked.

(B/o.)

PV

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4. The Chairman,

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5. The Principal Secretary,

Government of Andhra Pradesh,

Industries & Commerce Department,
Secretariat Buildings, Hyderabad.

6. The Director of Mines and Geology,

Burugularamakrsihna Rao Bhavan,

Tank Bund Road, Hyderabad.

7. The Assistant Director of Mines & Geology,

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